

**HEARING DATE AND TIME: May 12, 2010 AT 10:00 A.M.**

Riyaz G. Bhimani  
ECKERT SEAMANS CHERIN & MELLOTT, LLC  
10 Bank Street, Suite 1061  
White Plains, New York 10606  
Telephone: (914) 949-2909  
Facsimile: (914) 949-5425

*Attorneys for Merchantil Commercebank, N.A.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

In re:	:	Chapter 11
	:	
LEHMAN BROTHERS HOLDINGS, INC.,	:	Case No. 08-13555(JMP)
<i>et al.</i> ,	:	
	:	Jointly Administered
Debtors.	:	

---

**COMBINED RESPONSE OF MERCHANTIL COMMERCEBANK, N.A.  
TO THE DEBTORS' FIFTH AND EIGHTH OMNIBUS OBJECTIONS TO CLAIMS**

Merchantil Commercebank, N.A. ("Commercebank"), by and through its undersigned counsel, hereby files this Combined Response to the Debtors' Fifth and Eighth Omnibus Objections to Claims (the "Objections"), and in support thereof, respectfully represents as follows:

**I. BACKGROUND**

1. On or about September 15, 2008 (the "Petition Date"), and thereafter, Lehman Brothers Holdings, Inc. ("Holdings") and some of its direct and indirect subsidiaries (collectively with Holdings, the "Debtors"), filed petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

2. One of the Debtors is Lehman Brothers Special Financing, Inc. ("LBSF").

### **THE COMMERCEBANK CLAIMS**

3. Prior to the Petition Date, LBSF and Commercebank entered in to a certain ISDA Master Agreement dated March 29, 2001 (the “Agreement”), whereby five (5) credit default swaps were executed. A true and correct copy of the Agreement is attached to each of Commercebank’s proofs of claim, including claim numbers 2570, 2571, 4297, 4497, and 11154.

4. Pursuant to the Agreement, Holdings acted as a credit support provider to LBSF and was guarantor of LBSF’s obligations to Commercebank under a written guarantee (the “Guarantee”). A true and correct copy of the Guarantee is attached to Commercebank’s proofs of claim as Exhibit A to the Agreement.

5. Accordingly, for the debts owed to Commercebank under the Agreement and Guarantee, Commercebank holds a primary claim against LBSF and also a guarantee claim against Holdings.

6. Commercebank is listed in the Debtors’ schedules as having an unliquidated claim against LBSF, but is not listed as a creditor of Holdings.

7. Commercebank has filed substantially identical proofs of claim against LBSF and Holdings in the amount of \$235,998.00. As the Debtors’ claim filing procedures were modified during the course of the bankruptcy case, Commercebank, out of an abundance of caution, filed multiple substantially duplicate claims against both LBSF and Holdings.<sup>1</sup>

### **THE DEBTORS’ OBJECTIONS**

8. On April 1, 2010, the Debtors objected to a number of Commercebank’s claims, asserting that the objected-to claims were “Amended and Superseded” by subsequently filed claims.

---

<sup>1</sup> See claim numbers 2570 (indexed against Holdings), 2571 (indexed against LBSF), 4297 (indexed against LBSF), 4497 (indexed against LBSF), and 11154 (indexed against Holdings).

9. Specifically, in the Debtors' Fifth Omnibus Objection (the "Fifth Objection") (Docket No. 8006), the Debtors seek to "disallow and expunge" claim numbers 2570 and 2571, with the proposed surviving claim for each to be claim number 11154.

10. Then, in the Debtors' subsequent Eighth Omnibus Objection (the "Eighth Objection") (Docket No. 8009), the Debtors seek to "disallow and expunge" claim numbers 4297 and 4497, with the proposed surviving claim for each to be claim number 2571.

11. Notably, the proposed surviving claim for the Eighth Objection is one of the "Claims to be Disallowed and Expunged" in the prior-filed Fifth Objection.

12. As a result of this circular reference, it appears that the Debtors are attempting to disallow and expunge all but a single surviving claim, claim number 11154, which appears to be indexed only against Holdings.

13. This result would not be consistent with the Agreement, the Guarantee, or the Debtors' Schedules.

## **II. LIMITED OPPOSITION/RESPONSE**

14. If the Objections are both sustained as to Commercebank, the only surviving Commercebank claim will be claim number 11154, indexed against Holdings. As referenced above, Commercebank has a claim against two of the Debtors: a claim against LBSF under the Agreement and a claim against Holdings under the Guarantee.

15. Commercebank opposes the Debtors' Objections to the extent the Objections will eliminate either Commercebank's claim against LBSF or its claim against Holdings.

16. Unless the Debtors will stipulate that Commercebank's claim number 11154 represents a claim against LBSF and a claim against Holdings, Commercebank asserts that one of its claims against LBSF should not be disallowed and expunged.

WHEREFORE, Merchantil Commercebank, N.A., respectfully requests that this

Honorable Court enter an Order denying the Debtor's Eighth Omnibus Objection to Claims with respect to claim number 2571, and granting such further relief as this Honorable Court deems necessary and just.

Dated: April 29, 2010

Respectfully submitted,

ECKERT SEAMANS CHERIN MELLOTT, LLC

By: /s/ Riyaz G. Bhimani  
Riyaz Bhimani  
10 Bank Street, Suite 1061  
White Plains, NY 10606  
Telephone: (914) 949-2909  
Facsimile: (914) 949-5425  
rbhimani@eckertseamans.com

and

Louis A. DePaul, Esquire  
Harry A. Readshaw, Esquire  
ECKERT SEAMANS CHERIN MELLOTT, LLC  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219  
(412) 566-6010  
(412) 566-6099  
ldepaul@eckertseamans.com  
hreadshaw@eckertseamans.com

*Attorneys for Merchantil Commercebank, N.A.*

**CERTIFICATE OF SERVICE**

I, Riyaz G. Bhimani, hereby certify that the foregoing Combined Response to the Debtors' Fifth and Eighth Omnibus Objections to Claims was served upon the following via First Class U.S. Mail, postage prepaid, this 29th day of April, 2010:

Weil Gotshal & Manges LLP  
Attn: Shai Waisman, Esq.  
767 Fifth Avenue  
New York, New York 10153

The Office of the US Trustee  
Andrew D. Velez-Rivera, Esq.  
Paul Schwartzberg, Esq.  
Brian Masumoto, Esq.  
Linda Rifkin, Esq.  
Tracy Hope Davis, Esq.  
33 Whitehall Street, 21<sup>st</sup> Floor  
New York, NY 10004

Milbank, Tweed, Hadley & McCloy LLP  
Dennis F. Dunne, Esq.  
Dennis O'Donnell, Esq.  
Evan Fleck, Esq.  
1 Chase Manhattan Plaza  
New York, NY 10005

Honorable James M. Peck  
United States Bankruptcy Court  
One Bowling Green  
New York, New York, 10004

/s/ Riyaz G. Bhimani\_\_\_\_\_